

DW 04-048

CITY OF NASHUA

Petition For Valuation Pursuant To RSA 38:9

Order Granting Protective Treatment

O R D E R N O. 24,605

March 24, 2006

I. REQUEST FOR CONFIDENTIAL TREATMENT

On March 10, 2006, the City of Nashua (Nashua) filed with the New Hampshire Public Utilities Commission (Commission) a motion for protective order of certain information that Nashua expects to produce in discovery regarding its witness George E. Sansoucy, P.E., LLC (GES). Nashua seeks to protect from disclosure GES's compilation of water/utility sales data for appraisals, as well as third party confidential or financial information contained in GES's appraisals and/or related files.

Nashua seeks to limit the review of the confidential financial information to Qualified Persons, in the manner set forth by Order No. 24,495 (July 29, 2005). The limitations on review do not prevent any party or Commission Staff (Staff) from obtaining access to these documents, but rather create a procedure to obtain access after signing an appropriate agreement to comply with certain confidentiality obligations.

Nashua has obtained the full assent of Pennichuck Water Works, Inc., Merrimack Valley Regional Water District, the Town of Merrimack and Staff to the motion. The Office of Consumer Advocate takes no position.

II. COMMISSION ANALYSIS

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "*and* whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in original, citations omitted). The "asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553.

The Commission's analysis is designed to facilitate the employment of this balancing test. Consistent with RSA 91-A, the Commission requires petitioners to: (1) specify the documents or portions thereof for which confidential treatment is sought; (2) reference statutory or common law authority favoring confidentiality; and (3) identify the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public; and (4) provide certain other evidence such as whether the information would likely create a competitive disadvantage for the petitioner.

Nashua's request is to limit the review of the confidential financial information to Qualified Persons, in the manner approved by Order No. 24,495 regarding financial information submitted by Pennichuck. In that order, the Commission approved, on a prospective basis, protection of commercial and financial information that, if released, would harm the competitive position of Pennichuck Corporation and Pennichuck Water Service Corporation or would likely cause substantial economic harm to Pennichuck Corporation and Pennichuck Water Service Corporation, their customers or other members of the public. The information that is the subject of this Motion includes appraisal of public utilities for public and private clients throughout the United States. The appraisals include financial data of the underlying utilities. Some of the appraisals are confidential documents that, according to Nashua, contain trade secret information of GES and would put GES at a competitive disadvantage if disclosed.

Given the nature of this docket, with the considerable number of parties, and the procedures for challenging the designation of documents for limited access, we do not find it unreasonable to approve Nashua's request to limit access to certain sensitive documents to Qualified Persons. In balancing the public's interest in disclosure against Nashua's interest in non-disclosure, we conclude that the potential harms from disclosure outweigh the benefits of disclosure and, therefore, will grant the request for confidential treatment.

The grant of protective treatment for commercial and financial information and approval of the procedure for limiting accessing to certain information will be subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this decision should future circumstances so warrant.

Based upon the forgoing, it is hereby

ORDERED, that the request for protective treatment of GES's compilation of water/utility sales data for appraisals, as well as third party confidential or financial information contained in GES's appraisals and/or related files, limiting access as stated above, submitted by the City of Nashua, is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary